



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Utah State Office  
P.O. Box 45155  
Salt Lake City, UT 84145-0155  
<http://www.blm.gov>



IN REPLY REFER TO:  
3100 / (UT-922)

CERTIFIED MAIL – Return Receipt Requested

May 19, 2008

### DECISION

Trout Unlimited	:	Protest to the Inclusion of 13
c/o Corey Fisher, Energy Field Coordinator	:	Parcels in the February 19, 2008
401 B East Spruce Street	:	Competitive Oil and Gas Lease Sale
Missoula, MT 59802	:	

### **Protest Partially Granted and Partially Denied**

On January 4, 2008, the Bureau of Land Management (BLM) provided notice that 57 parcels totaling approximately 85,000 acres of land would be offered in a competitive oil and gas lease sale on February 19, 2008. The notice also indicated that the protest period for the lease sale would end on February 4, 2008. In a letter received by BLM on February 1, 2008, Trout Unlimited (TU) protested the inclusion of the following 13 parcels located on public lands administered by BLM's Salt Lake Field Office:

UTU85941	UTU85949	UTU85956
UTU85942	UTU85950	UTU85961
UTU85944	UTU85953	UTU85962
UTU85945	UTU85954	
UTU85946	UTU85955	

For the reasons discussed below, the protest is denied, with the exception of parcel UTU-85961, for which the protest is granted and the decision modified as explained below.

A. The Identification of the parcels proposed for inclusion in the February 2008 lease sale did not require preparation of a supplemental National Environmental Policy Act (NEPA) document or amendment to the underlying land use plan.

The TU Protest's first contention is very general. It appears to contend that the mere identification of the 13 parcels on BLM's January 4, 2008 notice of the February 2008 sale constituted a "changed circumstance" from the matters considered in the preparation of the underlying land use plan that required preparation of either a supplemental NEPA document and/or a land use plan amendment before the parcels could be included in the sale. See Protest at 1-2. For example, TU contends that "[b]ecause specific lease parcels have never been analyzed in a NEPA document, this needs to occur before they can be offered for sale." Id. at 2.

TU's contention is factually inaccurate and legally unsound. Briefly, the 13 leases are on lands that BLM manages pursuant to the Randolph Management Framework Plan (1980), as amended by the Bear River East Plan Amendment for Oil and Gas Leasing (1994) (Bear River Amendment). In the process of preparing the Bear River Amendment and making the land use planning decisions on what lands would be available for oil and gas leasing and development, BLM necessarily analyzed the potential impacts of such activity on those lands, including the lands underlying the 13 protested parcels. Consequently, TU's contention that no NEPA analysis has covered the 13 parcels is incorrect. Also incorrect is what appears to be the assertion by TU (based on its citation to 43 U.S.C. § 1712) that the underlying plan needed to be amended before BLM could lease the parcels. Moreover, even assuming that the identification of the 13 parcels constituted changed circumstances, BLM's duty under NEPA to conduct supplemental NEPA analysis does not arise based on only changed circumstances. Rather, as set forth in the Council of Environmental Quality (CEQ) regulations implementing NEPA, the duty arises when there is new information showing that the remaining action will affect the quality of the environment in a significant manner or to a significant extent not already considered. See 43 C.F.R. § 1502.9; Marsh v. Or. Natural Res. Council, 490 U.S. 360, 374 (1989). Obviously, the mere identification of parcel numbers for lands that have already been considered for leasing and made available for leasing pursuant to the land use planning process does not fall within these "significant new information" parameters.

Finally, even assuming there was significant new information requiring supplemental NEPA analysis, that analysis was properly completed in the Rich County Oil and Gas Leasing Environmental Assessment UT-020-2008-013 (EA) and subsequent Finding of No Significant Impact and Decision Record dated February 15, 2008. The EA included site-specific analysis concerning the specific parcels and was made available to the public for comment and review (TU did not submit any comments to BLM on the EA).

**B. BLM provided adequate notice of the lease parcels.**

The TU Protest generally contends that the maps of the subject parcels accompanying BLM's notice of the lease sale were not sufficiently detailed and constituted a violation of the Federal Onshore Oil and Gas Leasing Reform Act (FOOLGRA), 30 U.S.C. § 226(f)).

BLM fully complied with the requirements of FOOLGRA by providing the public with information on the lease parcels through specific legal descriptions and maps showing their location. Additional maps were made available to the public for review in a variety of locations, including BLM's Utah State Office Public Room in Salt Lake City, Utah, and on BLM's Utah internet site at [www.blm.gov/ut/st/en/prog/energy/oil\\_and\\_gas\\_lease.html](http://www.blm.gov/ut/st/en/prog/energy/oil_and_gas_lease.html). TU's general contention that this information was inadequate lacks merit.

**C. BLM's cumulative impacts analysis in the EA complied with NEPA.**

The TU protest generally contends that: "[t]he cumulative impacts of global climate change, the compromised life history for native, fluvial Bonneville cutthroat trout, and the impacts of oil and gas development need to be evaluated and considered in a Supplemental Environmental Analysis for the NEPA document governing the issuance of the leases before they can be sold . . . ." See Protest at 2. This portion of the Protest apparently recognizes the EA that BLM prepared for the lease sale. TU does not, however, identify any particular cumulative impact that BLM failed to consider and establish that such impact would be significant. Consequently, the TU Protest fails to show error in the EA's cumulative impacts analysis. See San Juan Citizen's Alliance, 129 IBLA 1, 11 (1994).

D. Lease Stipulation UT-S-04 is adequate to protect the Bonneville Cutthroat Trout.

In its Protest, TU opines that lease stipulation (UT-S-04; NSO within 600 feet of live water) “does not go far enough for the protection of cutthroat trout and the clean, healthy watersheds that they depend on”, and that if the leases are to be offered, and NSO stipulation within ½ mile of surface water is needed to protect the trout. TU also notes in its protest that lease parcel UTU85961 does not contain an NSO stipulation within any distance of live water, yet it appears that the eastern border of the lease is delineated by Otter Creek. See Protest at 3-4. However, beyond expressing this opinion, TU provides no information to show that NSO within 600 feet of surface water will not protect the trout.

In analyzing the potential impacts to the Bonneville cutthroat trout, the EA indicated that avoidance of riparian zones and set-backs would be sufficient to minimize or preclude direct impacts to the habitats of the Bonneville cutthroat trout and other aquatic species, and no impacts are likely to occur. Further, the 600 feet NSO stipulation imposed on the lease parcels goes beyond what most of the relevant literature reviewed by BLM indicates is appropriate for the protection of fisheries. And, as mentioned above, TU provides no information to show that NSO within 600 feet of surface water will not protect the trout. Consequently, imposing the NSO stipulation advocated by TU is not necessary. Finally, BLM has broad authority to prevent unacceptable impacts to resources and, in its additional environmental review of any future applications for permits to drill, impose appropriate resource protection conditions.

With respect to parcel UTU85961, TU is correct in stating that the NSO stipulation was omitted from this lease parcel and should have been applied, and the leasing decision is herein modified to add lease stipulation UT-S-04 to parcel UTU85961.

E. Conclusion.

For the above-stated reasons, the TU Protest is granted as it applies to the inclusion of the NSO stipulation to parcel UTU85961 and denied for all other issues raised by TU in its protest.

BLM received sale offers on all 13 parcels. All 13 parcels were also the subject of another protest, and resolution of this other protest may govern whether or not a lease for a particular parcel may be issued.

Appeal Opportunity:

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 C.F.R. Part 4 and the enclosed Form 1842-1. If an appeal is taken, the notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay pursuant to 43 C.F.R. Part 4, Subpart B §4.21, during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay must show sufficient justification based on the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

## Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall be evaluated based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

Copies of the notice of appeal, petition for stay, and statement of reasons also must be submitted to each party named in this decision and to the Office of the Solicitor, Intermountain Region, 125 South State Street, Suite 6201, Salt Lake City, Utah 84138, at the same time the original documents are filed in this office. You will find attached a list of those parties who purchased the subject parcels at the February 19, 2008 sale and therefore must be served with a copy of any notice of appeal, petition for stay, and statement of reasons.

*/s/ Jeff Rawson*

Selma Sierra  
State Director

### Enclosures

- Appendix 1. Form 1842-1 (2pp)
- Appendix 2. List of purchasers (1p)

cc: List of purchasers (3)  
James E. Karkut, Office of the Regional Solicitor, 125 South State St., Suite 6201,  
Salt Lake City, UT 84138

bcc: WO-310, 501LS  
Salt Lake Field Office  
Reading Files, UT-910, UT-930, UT-922, UT-952  
Case Files

List of Purchasers for February 2008  
TU Protested Parcels

CTD, Inc.  
3355 N. Five Mile Road, #282  
Boise, ID 83713

Bro Energy, LLC  
4834 So. Highland Dr., #200  
Salt Lake City, UT 84117

Energy West Corp.  
PO Box 1441,  
Denver, CO 80204